DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 97-0373
STATE GROSS RETAIL TAX
For Years 1993, 1994, AND 1995

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. State Gross Retail Tax — Dealer Rebates

Authority: 45 IAC 2.2-4-1(b); 45 IAC 15-5-4; IC 6-2.5-2-1; IC 6-2.5-2-2; IC § 6-8.1-5-1; Sales/Use Tax Information Bulletin #28

Taxpayer protests the proposed assessments of sales tax on rebates paid by the manufacturer to the dealer.

II. State Gross Retail Tax — Capitalized cost reductions

Authority: *Linville Olds-Cadillac, Inc. v. Indiana Department of State Revenue, Cause No. 49T10-9910-TA-202, 2004 Ind. Tax LEXIS 22*

Taxpayer protests the assessments of sales tax on capital projects.

III. State Gross Retail Tax —Projection

Authority: IC § 6-8.1-5-4

Taxpayer protests the proposed assessments based on a projected error rate.

IV. State Gross Retail Tax — Use tax

Authority: 45 IAC 2.2-3-4; IC § 6-8.1-5-4

Taxpayer protests the proposed assessments of use tax on materials used in construction.

V. State Gross Retail Tax —Loaner Fleet

Authority: 45 IAC 2.2-3-5

Taxpayer protests the proposed assessments of use tax on rental vehicles.

STATEMENT OF FACTS

Taxpayer sells new and used cars and trucks. Taxpayer also has a parts department, service department, and body shop. In addition, the dealership maintained a loaner car fleet during most of the audit periods and rented vehicles using a third-party vendor. Assessments of sales and/or use tax were made on manufacturer's payments received by the dealer, capital purchases, including materials used in construction, loaner vehicles, lease arrangements, and on a projected error rate for general purchases.

Taxpayer filed a protest and a hearing was held. After the hearing, the taxpayer and Department determined that the facts related to the protest on lease arrangements were closely related to the *Linville Olds* court case and deferred this Letter of Findings until the resolution of that case.

I. State Gross Retail Tax -- Dealer Rebates

DISCUSSION

The various manufacturers of the vehicles sold by taxpayer offer payments to either the dealer or customer on the vehicles sold. Based on the forms of these payments, gross retail tax may or may not be due on these amounts as outlined below.

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state. IC 6-2.5-2-1. The amount of sales tax is determined by applying the tax rate to the gross retail income received by the merchant. IC 6-2.5-2-2. "Gross retail income" is defined at IC 6-2.5-1-5(a) as follows:

> "Gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction, except that part of the gross receipts attributable to:
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> > (1) the value of any tangible personal property received in a like kind exchange in the retail transaction: or
> > (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract.

The value of the gross retail income transferred for tangible personal property in a retail sale is defined at 45 IAC 2.2-4-1(b) as follows:

> All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:
>
> > (1) The price arrived at between purchaser and seller. . .

Sales/Use Tax Information Bulletin #28 issued December 1992(Suspended June 2005) includes the following explanation of the actual taxable selling price in a retail transaction.

> A manufacturer's rebate is not considered deductible for sales tax purposes. This is because the purchaser is not entitled to the rebate until the vehicle is sold. In those instances, where the purchaser retains control of determining how to utilize the rebate, the rebate remains taxable. For example, if the purchaser has the option of receiving the rebate in cash, or assigning the rebate to the dealer to be applied as a down-payment on the purchase of the car, the character of the rebate remains taxable. Therefore, the purchaser is simply agreeing in advance to use the cash rebate as part of the purchaser's consideration in buying the vehicle. However, where the purchaser has no control over the use of a manufacturer's rebate, the rebate will be considered a manufacturer's price reduction, and will be deductible for sales tax purposes and not included in the taxable selling price. For example, where a documented manufacture's rebate stipulates that the rebate must be assigned to the dealer by the purchaser, the purchaser never has control over the use of the rebate and as such, the rebate would be considered deductible for sales tax purposes.
>
> A manufacturer's price reduction is considered deductible for sales tax purposes. This is because the manufacturer is actually reducing the selling price of the vehicle. The dealer (seller) does not receive the amount of the price reduction as consideration.
>
> A dealer's price discount is also considered deductible in determining the amount on which sales tax is charged. The selling price is reduced by the dealer's price discount. The dealer (seller) does not receive the amount of the price discount as consideration for the vehicle sale.

The auditor and the general manager reviewed the list of manufacturer's payments to verify the dealership's classification of these payments. The auditor determined that a number of the entries were not correctly characterized and some of the manufacturer's payments were reclassified from "dealer's price discount" or "manufacturer's price reduction" -non-taxable- to "manufacturer's rebate" –taxable.

Taxpayer disagrees with the reclassification of these transactions to "manufacturer's rebates", but does not provide sufficient documentation to demonstrate the reclassification was incorrect. Pursuant to the above statute and the requirements of IC § 6-8.1-5-1 and 45 IAC 15-5-4, taxpayer has not established a basis for reversal of the sales tax assessment.

FINDING

Taxpayer's protest is denied.

II. State Gross Retail Tax —— Capitalized cost reductions

DISCUSSION

This issue was held pending the resolution of a court case, which has now been resolved. The decision by the tax court, *Linville Olds-Cadillac, Inc. v. Indiana Department of State Revenue, Cause No. 49T10-9910-TA-202, 2004 Ind. Tax LEXIS 22*, was unpublished, but based on the Department's prior arrangement, taxpayer's protest of this issue is sustained pursuant to the court's holding in this case.

FINDING

Taxpayer's protest is sustained.

III. State Gross Retail Tax — Projection

DISCUSSION

This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Subject to the guidelines above, the Department will grant credit for the applicable transactions for which valid documentation has been provided. In this instance, the taxpayer and the Department agreed to use a sample month and project an error rate based on this period. Taxpayer now argues that some of the transactions from the sample month may have been misclassified, or that further documentation related to the transactions can now be provided, thus the error rate should be accordingly reduced. Department declines to rework the error rate determination based on taxpayer's selective review of isolated transactions.

FINDING

Taxpayer's protest is denied.

IV. State Gross Retail Tax —Use tax

DISCUSSION

The audit made an adjustment for general dealership purchases that were not for resale, including purchases by a contractor for building repairs and improvements. Audit deducted the amounts where tax was paid and assessed tax on the unverified portion of the purchases. Taxpayer argues that the contractor making improvements to the property was responsible for remitting sales tax on these purchases. 45 IAC 2.2-3-4 states:

> Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Taxpayer is the ultimate user of these supplies, as such, pursuant to IC § 6-8.1-5-4:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Subject to the guidelines above, the Department granted credit where transactions for which valid documentation was provided and-as required by the above guidelines- no credit was granted for transactions for which no documentation was provided. Taxpayer cites no authority in support of its request to shift responsibility for the tax on the property it is using to a third party.

FINDING

Taxpayer's protest is denied.

V. State Gross Retail Tax — Loaner Fleet

DISCUSSION

Audit made an adjustment for their rental fleet. The rental fleet actually consisted of vehicles that were loaner vehicles which were offered to customers free of charge. Taxpayer used a third party for actual rental of cars. Audit assessed used tax based on the mileage driven. The authority for this adjustment is found in 45 IAC 2.2-3-5(b)

> The sale of any vehicle required to be licensed be the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use tax unless such purchaser is entitled to one or more of the exemptions as provided on form ST-108….

Taxpayer argues that since these vehicles were eventually sold and sales tax remitted, the use tax should only be assessed on the difference between a new car sales price and the price the vehicle was actually sold for. The taxpayer does not address the nearly $450,000 taxpayer claimed as depreciation for these vehicles during the audit period, nor does taxpayer provide an exemption that would apply to this taxable use of the vehicles.

FINDING

Taxpayer's protest is denied.

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